

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<https://oversight.house.gov>

Ranking Member Jamie Raskin Committee on Oversight and Accountability Hearing on “Unsuitable Litigation: Oversight of Third-Party Litigation Funding” September 13, 2023

Thank you, Chairman Comer, and thank you to our witnesses for being here today.

All over America, people are in an uproar over the money that billionaires and big corporations are spending to influence individual Justices on the Supreme Court. Americans see that personal gifts to Justices from right-wing billionaire sugar daddies like Harlan Crow and Federalist Society dark money expenditures are fundamentally perverting judicial ethics and undermining justice and the rule of law.

Apparently responding to the national outcry over this ethics crisis on the Supreme Court, our colleagues have called a hearing today about the influence that wealth exerts on the justice system, but they have gone off on a surprising and bizarre tangent. **The problem, Republicans say, is not the way the public is harmed when right-wing billionaires bankroll the private lives of ethically-challenged Supreme Court Justices. The real problem is that giant corporations are harmed when Americans injured by toxic torts or environmental crimes receive contributions from liberal donors to help them bring personal injury or class action lawsuits.**

In other words, while Supreme Court Justices are jetting all over the world on fancy private family vacations paid for by billionaires or collecting hefty cash gifts from billionaires for their personal museums and family members’ private school tuition payments, the GOP says the key problem in our legal system is that too many victims of corporate wrongdoing are finding access to the courts at all.

We say “justice is blind” because the Greek statue for Justice wears a blindfold; in solving cases, judges are supposed to be blind to wealth and poverty, personal friendship and party affiliation.

A poor person who has never met a judge must be treated the same by the courts as Harlan Crow, the real estate tycoon billionaire chum of Justice and Mrs. Clarence Thomas who had a case before the Supreme Court and who has given the Thomases lavish personal gifts, like week-long luxury travel on his super-yacht and private jets, and generous money payments for family tuition over a period of 20 years ever since Thomas joined the Court. A collector of not-so-fine art created by dictators who actually owns and displays two paintings done by Adolph Hitler, Mr. Crow donated \$105,000 to the Yale Law School in 2018 for another painting he desires, writing a check to the “Justice Thomas Portrait Fund.”

Justice Thomas is not unique. He is just emblematic of the collapse of ethics across the street. Justice Alito took a long fishing trip with a hedge fund magnate who has had business before the Supreme Court 10 times in the last fifteen years. Neither Justice recused himself in the relevant cases or made any relevant timely disclosures.

Justice is supposed to be blind to the blandishments of money and class power. It is only supposed to see the facts and the law. But, in the Roberts Court, judicial vision is clouded everywhere by dollar signs and luxury power trips. The facts and the law are barely visible when it comes to the rights of hourly workers trying to organize a union, poor women seeking abortions or consumers injured by adhesion contracts and corporate ripoffs. Justice is a rich man's game in this Court of billionaires and right-wing ideologues. The Bill of Rights has mostly been left in the dust.

On the Roberts Court, justice is indeed blind but only to ethics itself; it is deaf to the pleas of women and working people; and it is dumb in its refusal to see how it has destroyed its own legitimacy. It is certainly not mute as Justices Alito and Thomas vociferously defend their jet-setting lifestyles in shockingly intemperate and political terms.

If we are going to return to “equal justice under law,” as it is written over the entrance to the Supreme Court, if we are to make justice blind to the wealth and connections of the parties in the courtroom, then our justices must be held to the highest ethical standards.

Yet, amazingly, the Justices are not even subject to the basic Code of Conduct for United States Judges that all other federal judges are subject to. The nine Justices are, in fact, not bound by any ethical standards at all, much less the comprehensive ethics code that applies to every other judge in the federal and state judicial system.

Their decisions can affect or destroy the rights of all Americans, but the Justices refuse to abide by any written ethical code. They decide on their own if their work is impaired by a real or apparent conflict of interest, a terrible system which cuts against the cardinal principle of justice articulated by James Madison in the Federalist Papers: “No man is allowed to be a judge in his own cause[.]”

The highest court in our land has the lowest ethical standards. This is the crisis that Congress should be discussing today. But our colleagues have instead called a hearing to assert that it's just too easy to haul big corporations into court when they violate other Americans' rights to health, safety, property, and environmental quality. The third-party litigation funding under attack today is the only way that a lot of victims of corporate misconduct and negligence can even get into court. Do our colleagues really want to make it illegal to receive contributions to vindicate your rights?

I could understand if they were saying that all the present federal rules of civil procedure against frivolous, vexatious and groundless litigation weren't working and needed to be toughened up. I could understand if they were arguing that Rule 11 sanctions against baseless lawsuits needed to be expanded or fortified.

But that's not what they're arguing. They're not citing any kind of increase in frivolous or meritless litigation nor are they arguing that current sanctions don't work to deter frivolous lawsuits. Those sanctions are working just fine. No, they're looking for ways to reduce the prosecution of merit worthy and successful lawsuits against corporate wrongdoers.

By pulling the rug out from underneath actual tort victims, they hope to keep plaintiffs from even getting into court. **The GOP wants to dramatically reduce accountability and liability for corporations that flood our country with opioids to make obscene profits, corporations that poison our communities with asbestos or lead and other dangerous carcinogens; and corporations that inflict black lung disease, mass oil spills and other lethal injuries on American workers and their families.**

Our colleagues seem confused. No one has a right to bribe judges or load them up with fancy gratuities, but people do have every First Amendment, Due Process and Equal Protection right to raise money to make their case in court. The courts are not just there for rich people who can write themselves a check. This is the same

reason people have a right to give and receive campaign contributions, for public office is not just for the independently wealthy.

Victims bringing these lawsuits, especially those who are low-income or unable to work because they are injured or sick, often could not afford to bring the lawsuits at all without financial help from other citizens. If their lawsuits have no merit, they will be thrown out, but if they have merit, then we should all be grateful they are working to make society safer by stopping and penalizing the wrongdoers before they commit more wrongs against society.

Many landmark cases establishing the basic rights of Americans were funded by contributions from outside groups. Cases like *Brown v. Board of Education*, *Loving v. Virginia*, which struck down Jim Crow anti-miscegenation laws and upheld the right to marry who you want, and *U.S. v. Windsor*, which upheld the rights of same-sex marriage.

The corporate interests represented on the panel today who are attacking this basic right are here for an obvious reason. They don't like paying damages when their victims prove their rights have been violated in court.

Johnson & Johnson has had to pay billions of dollars for its central role in the opioid epidemic and billions more to tens of thousands of people who developed cancer because of the company's dangerous talcum powder.

Mining and offshore drilling companies have had to pay billions of dollars for poisoning communities, land, and water and causing irreparable harm to human health. Perhaps one of the largest environmental cases in the history United States, oil company BP agreed to pay nearly \$20 billion for damages cause by the Deepwater Horizon oil spill in Gulf of Mexico. In 2011, Hecla Mining Company agreed to pay over \$260 million for damages to natural resources in Idaho caused by millions of tons of mining waste being released into local rivers. There are countless other examples of personal and environmental harm caused by these companies that have been partially rectified by litigation.

One can only regard with amazement the fact that our colleagues are in such a hurry to promote the self-pitying grievances of these wealthy tortfeasors and wrongdoers that they do not even pause to consider that there are hundreds of millions of dollars in right-wing third-party litigation financing which regularly bankrolls anti-choice, anti-LGBTQ, and anti-gun safety lawsuits, among others.

Well-funded right-wing networks like the Pacific Legal Foundation, the Koch network, and the Judicial Crisis Network have poured hundreds of millions into remaking America through the courts on issues ranging from attacking the curriculum in local public schools to opposing compulsory union dues to repealing the Consumer Financial Protection Bureau.

The Alliance Defending Freedom and other right-wing groups brought the Dobbs case and are working to completely eliminate access to abortion for all Americans. Our colleagues don't complain about that and they don't even mention it. Are they willing to sacrifice the rights of these third-party litigation financiers on the Right or are they just not serious about this whole thing and simply looking for another catchy way to distract everyone from Donald Trump's 91 different criminal charges in four separate prosecutions? Is this whole hearing a bunch of hoey?

Everyone knows that a fish rots from the head down, and everyone knows what stinks to the high heavens in the judicial system is, alas, the Supreme Court itself. Let's focus on where the corruption of justice is really taking place.

Thank you. I yield back.

###

Contact: Nelly Decker, Communications Director, (202) 226-5181